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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,348	03/26/2004	Manfred Gilbert	LEAP:136US	1567
7590	08/02/2005		EXAMINER	
S. Peter Konzel, Esq. Simpson & Simpson, PLLC 5555 Main Street Williamsville, NY 14221-5406			NGUYEN, THONG Q	
			ART UNIT	PAPER NUMBER
			2872	

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/811,348	Applicant(s) GILBERT ET AL. 	
	Examiner Thong Q. Nguyen	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings contained five sheets of figures 1-5 were received on 3/26/2004. These drawings are objected by the Examiner for the following reason(s).

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "46" has been used to designate both "a hand of a user" as shown in figure 2 and "a wall" as shown in figure 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

5. The disclosure is objected to because of the following informalities: In page 4, section [0017], applicant has stated that some information disclosed in the copending applications of the present application is incorporated into the present application. However, applicant has failed to provide the sufficient information of the copending application. Applicant should amend the mentioned section by adding the serial number and the filing date of each copending application. Appropriate correction is required.

Claim Objections

6. Claim 15 is objected to because of the following informalities. It is unclear about the structural relationship among the recessed portion, the removable panel and the interior surface of the microscope arm. In other words, it is unclear which element, i.e., the removable panel or the interior surface, has a recessed portion. An explanation or an appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 6, 8-12, 14-17 and 19, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Komatsuzaki (U.S. Patent No. Des. 400,548).

Komatsuzaki discloses a microscope. The microscope as described in figures 1-6, in particular, in figures 1 and 4 comprises a stand having a C-shaped configuration for supporting an optical system having an eyepiece and a revolver having a plurality of objective lenses and a stage. The stand comprises an interior surface facing to a user who uses the microscope by seeing through the optical system and an exterior surface facing to the rear side of the microscope. The interior surface of the stand comprises a step portion which is made as a recess section facing into the inner surface of the interior surface. The surface defined between the interior surface and the inner recess surface is a wall extending between the two surfaces wherein the wall has a planar configuration. See figure 4. It is noted that at least the lower end of the recess section is positioned above the stage and lower than the objective turret. The thinner section of the stand which section has the recessed section is used by a user as a place for gripping the microscope wherein the plane defined by the palm and fingers of the user's hand is in contact to the plane defined by the recessed section of the stand.

Regarding to the feature related to the so-called "removable panel" recited in claim 15, it is noted that the section supporting the stage which is in contact with the interior surface of the stand is a removable panel.

9. Claims 1-6, 8-12, 14-17 and 19, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Apotheloz (U.S. Patent No. D459,744 S).

Apotheloz discloses a microscope. The microscope as described in figures 1-12, in particular, in figures 1-4 comprises a stand having a C-shaped configuration for supporting an optical system having an eyepiece and an objective turret and a stage. The stand comprises an interior surface facing to a user who uses the microscope by seeing through the optical system and an exterior surface facing to the rear side of the microscope. The interior surface of the stand comprises a recess section facing into the inner surface of the interior surface. See figures 1-3 in which figures 1-2 show the front side of the stand and figure 3 shows the rear side of the stand which rear side is a closed surface. The surfaces defined between the interior surface and the inner recess surface are a plurality of left, right and rear walls extending between the interior and inner recessed surfaces. It is noted each of the left and right wall has a planar configuration and the rear wall has an arcuate configuration. See figures 1 and 5-6. It is noted that at least the lower end of the recess section is positioned above the stage and lower than the objective turret. The recessed section of the interior surface is used by a user as a place for gripping the microscope wherein the shape defined by the palm and fingers of the user's hand is in contact to the shape defined by the recessed section of the stand.

Regarding to the feature related to the so-called "removable panel" recited in claim 15, it is noted that the section supporting the optical system which is in contact with the interior surface of the stand is a removable panel.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 7, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Komatsuzaki in view of Stevens (U.S. Patent No. 5,406,731).

The microscope with the interior surface defined an inner recessed section as provided by Komatsuzaki does not state that the inner recessed section comprises a textured surface for the purpose of increasing the static coefficient of friction. However, it is known to one skilled in the art to use a surface having a textured surface for such mentioned purpose. One use of a textured surface on a surface used to grip by a user's hand is disclosed in the apparatus provided by Steven. See column 4, lines 45-65. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the microscope provided by Komatsuzaki by using a textured surface on a surface using to grip by a user's hand as suggested by Steven for the purpose of increasing the coefficient of friction between the user's hand and the recessed section of the interior surface of the stand when the user grips the microscope.

12. Claims 7, 13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apotheloz in view of Stevens.

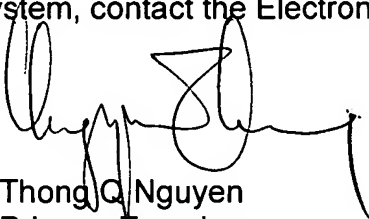
The microscope with the interior surface defined an inner recessed section as provided by Apotheloz does not state that the inner recessed section comprises a textured surface for the purpose of increasing the static coefficient of friction. However, it is known to one skilled in the art to use a surface having a textured surface for such mentioned purpose. One use of a textured surface on a surface used to grip by a user's hand is disclosed in the apparatus provided by Stevens. See column 4, lines 45-65. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the microscope provided by Apotheloz by using a textured surface on a surface used to grip by a user's hand as suggested by Steven for the purpose of increasing the coefficient of friction between the user's hand and the recessed section of the interior surface of the stand when the user grips the microscope.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q. Nguyen
Primary Examiner
Art Unit 2872
